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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,478	06/20/2001	Bruce E. Brown	21893-05171	7015

8968 7590 03/24/2005

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EXAMINER

WRIGHT, NORMAN M

ART UNIT	PAPER NUMBER
2134	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## *HL* Office Action Summary

	Application No.	Applicant(s)
	09/886,478	BROWN ET AL.
Examiner	Art Unit	
Norman M. Wright	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 28 August 2002.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-75 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*3/24/02*  
NORMAN M. WRIGHT  
PRIMARY EXAMINER

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/28/02

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.84(h)(5) because Figures 2-4 show(s) modified forms of construction in the same view, they contain handwritten information on the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-75, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. As per claims 1, 15, 24, 47, and 70, they recited "...performing at least one authentication ...". Then, it recites combining the scores for the authentications. These two elements do not agree in number. Moreover, if only one authentication is performed then, there would be no scores to combine. Additionally, for each result, it is suggested that said authentication result be used for consistency in terminology.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 3, 17, 26, 40 and 49 recites the broad recitation "...performing at least one authentication comprising...", and the claim also recites "...group consisting..." which is the narrower statement of the

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range/limitation. As to claim 3, 16, the use of the group consisting of does not sever to further limit the claim, as it appears to have open phraseology followed by closed language. It appears that the scope of the claims is ambiguous, as such this is not clearly understood by the examiner.

As to claims 20, 22, 43 and 66, the terminology of "...relative degree of reliability..." or "...degree of security..." appears to render the claim indefinite, as the terms fail to set-forth clearly and distinctly the meets and bounds of the material sought to be patented. Applicant is advised that the term "...relative degree of reliability..." in claim 22 is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The problems listed above are exemplary and all of the claims should be checked for 112 issues. Correction is required.

4. Do the length of the specification it has not been checked to the extent necessary to identify all 112 issues. Applicant cooperation is appreciated in identifying and correcting inconsistencies and 112 problems contained within.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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5. Claims 47-69 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 47-69 recite a computer readable medium for authenticating. The computer medium does not have the program or code necessary to cause the computer to be programmed tangibly embodied thereon; as such it is non-statutory.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. As understood in view of the above concerns, claims 1-9, 11,15-23, 24-32, 34, 38-51, 53-55, 57-72, and 74-75 '477, are rejected under 35 U.S.C. 102(e) as being clearly anticipated by French et al., U.S. Pat. No. 6,263,447, hereinafter '447.

As per claims 1-9, 11,15-23, 24-32, 34, 38-51, 53-55, 57-72, and 74-75 '477 teach a system and method for authentication (abs.), comprising: determining a level of trust, authenticating identification, one authentication, a score, combining scores to determine level of trust (fig. 1 (32-50), fig. 2 (52-72), figs. 12-14 et seq., col. 5, lines 11 et seq., identification (figs. 11, 13-14 et seq.), a group of a person, document/item (fig. 12, col. 6, lines 1-35 et seq., exceed trust allow access, a first and second level of access, allowed action (fig. 1, (32-46), fig 2, (58-70), lines , a role/authenticated user, a

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document, sum of scores, corresponding authentication method (col. 12, lines 14 et seq.), a group of password, secret, biometric location etc., network characteristic, physical location (fig. 45, col. 6, lines 15 et seq., col. 7, lines 14 et seq.), degree of security, previous authentication, relative degree, access (abs., figs. 1-3, col. 12, lines 20 et seq., col. 13, lines 49 et seq., col. 14, lines 5 et seq., col. 15-16 et seq.).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norman M. Wright whose telephone number is (703) 305-9586. The examiner can normally be reached on 5/4/9 compressed week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Morse can be reached on (703) 308-4789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Norman M. Wright  
Primary Examiner  
Art Unit 2134